

Title 3. Food and Agriculture
(Notice Published June 25, 2004)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department), pursuant to rulemaking authority granted by Sections 407 and 61341, Food and Agricultural Code (FAC), in order to implement, interpret, and make specific Sections 61381 through 61391 of the FAC, proposes to adopt, amend or repeal sections in Articles 1 through 7 in Title 3, Chapter 3, California Code of Regulations relating to unlawful practices in marketing milk and dairy products.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed to Eric Erba, Department of Food and Agriculture, Dairy Marketing Branch, 1220 N Street, Sacramento, CA, 95814, no later than 5:00 p.m. Monday, August 9, 2004. Written comments may also be sent to Eric Erba via electronic mail at eerba@cdfa.ca.gov or via FAX (916) 341-6697.

CONTACT PERSONS: Inquiries concerning this action may be directed to Eric Erba or Mary Riley at (916) 341-5988.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Authority and Reference: FAC Sections 407 and 61341 authorize the Department to adopt and amend the regulations as proposed. The regulations would implement, interpret, or make specific Sections 61381-61391 of the FAC.

The enactment of SB 1381, Statutes of 2000, repealed a number of statutory restrictions regarding the marketing of milk and dairy products. However, the Legislature retained other longstanding restrictions to discourage predatory marketing practices, such as selling milk and other dairy products below cost.

SB 1381 also requires the Department to establish, through regulation, procedures for determining compliance with this law. These regulations propose adoption of cost accounting procedures to be used to determine compliance with sales below

cost statutes, propose the repeal of various sections which reference statutes which have been repealed, and propose amendments to the remaining sections to update them.

Sections 1804, 1806, 1808, 1809, 1831, 1930, 1931, 1932, and 1950 will be amended for consistency with current industry marketing practices and for clarity.

These sections reference FAC Sections 61391, which prohibits solicitation, collusion, or joint participation; 61441-61443, regarding record keeping; 61306 regarding definitions; and 61382-61384, regarding sales below cost and meeting competition.

Sections 1811, 1812, and 1850 will be adopted to establish procedures and methods for evaluating and determining costs of various components and marketing activities for manufacturers, distributors, handlers, and wholesale customers.

These sections reference FAC Sections 61382-61384, which prohibit price discrimination and sales below cost, and which require accounting and other procedures to be established by the Department for enforcement purposes; and Sections 61441-61443 regarding record keeping requirements.

Sections 1810, 1851, 1851.1, 1870.1, 1870.2, 1871, 1872, 1873, 1951, and Article 7 will be repealed, as they are either outdated or lack statutory authority due to changes made by SB 1381.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accord with Government Code Section 17500 - 17630: None
- Other non-discretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- | ➤ Significant statewide adverse economic impact [directly affecting](#) business, including the ability of California businesses to compete with businesses in other states: None

- The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- Significant effect on housing costs: None.

SMALL BUSINESS DETERMINATION

The Department has determined that the proposed regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Eric Erba or Mary Riley
Dairy Marketing Branch
Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814
Telephone: (916) 341-5988

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to:

Mary Riley
Dairy Marketing Branch
Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814
Telephone (916) 341-5988

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will make available the entire rulemaking file for inspection and copying throughout the rulemaking process at its office at 560 J Street, Suite 150, Sacramento, CA 95814. The text of proposed regulations, notice, and initial statement of reasons are also available on the Internet, at www.cdfa.ca.gov/dairy. The final statement of reasons will be posted at the same location when it has been prepared. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Mary Riley at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the original proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Mary Riley at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mary Riley at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, Initial Statement of Reasons, and the text of the proposed regulations in underline and strikeout can be accessed through the Department's website at www.cdfa.ca.gov/dairy.